IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9827 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DABHI ARJANSINH KUJSINH

Versus

CHANDAP MILK PRODUCERS CO-OP SOCEITY LTD.

Appearance:

1. Special Civil Application No. 9827 of 1994

MR JV JAPEE for Petitioner No. 1-6

MR AJ PATEL for Respondent No. 1

Mr. KT Dave, AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 29/04/2004

ORAL JUDGEMENT

The petitioners had filed the present Special Civil Application under Article 227 of the Constitution of India challenging the judgment and order dated 26.7.1993 passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad in

Revision Application SRD No. 12/1992 dated 16.8.1993 in allowing the same and quashing and setting aside the order passed by the Collector, Sabarkantha, dated 16th June 1992 in Appeal No. 1138 of 1991 and in restoring the order passed by the Deputy Collector, Himatnagar dated 7th January 1991 and in setting aside the auction with regard to the lands/plots in question.

2. That all the petitioners are the residents of Village Vedipara which is part of Chandap Gram Panchayat. That it seems that they had made an application to the Sarpanch of Chandap Gram Panchayat to allot them suitable plots for residential accommodation and on the basis of the said application proceedings for public auction were held by Taluka Development Officer and six plots admeasuring 20 sq.metres came to be allotted to each petitioner and so-called public auction came to be held on 27.5.1987 in which auction only the petitioners participated and the lands in question came to be allotted to the petitioners at the rate of Rs. 1.75 per metre. It is pertinent to note that upset price of the land was fixed at Rs. 1.50 per metre. On the basis of the said so-called public auction dated 27.5.1987 the aforesaid lands came to be allotted to the petitioners. Necessary Kabuliyats were also issued in favour of the petitioners on 1st August 1987.

3. As the plots in question were found to be on public road and that by allotting the aforesaid plots the width of the road was to be decreased and therefore the respondent No.1 herein,Chandap Milk Producers Cooperative Society preferred an Appeal No. 29 of 1989 before the Deputy Collector, Himatnagar. Apart from reduction of width of the public road it was contended on behalf of respondent No.1 that the procedure which is followed by the Taluka Development Officer with regard to public auction is not in accordance with law. It was also submitted that proper procedure is not followed and wide publicity was not given. It was also further submitted that the applications which were given by the petitioners to the Panchayat were without any signature and without any date. It was also further submitted that though proclamation for holding the auction was issued, However, in the said proclamation the auction was scheduled to take place at 8.00 A.M. or thereafter on 11.7.1986 and no specific time was indicated in the proclamation for holding the auction. Therefore, it was submitted that this was done deliberately with a view to see that rest of the persons interested in participating in the auction were excluded from participating in the auction. It was also further alleged that the Deputy Sarpanch of the

village was interested in seeing to it that his son who was one of the participants remained present at the auction and therefore deliberately he has tried to see that other persons may not participate in the auction. It is pertinent to note here that son of Deputy Sarpanch is one of the persons who was allotted a plot in question. The Deputy Collector, Himatnagar considering the evidence on record and after giving opportunity to all the interested parties set aside the auction and the order passed by the T.D.O. dated 9.3.1988 by holding that there is no signature on the applications made by the petitioners to the Sarpanch, Chandap Gram Panchayat and no date is mentioned when the applications came to be received by the Sarpanch. He has also further held that in the statement of the petitioner which is signed by the Deputy Sarpanch and there is no signature of the Sarpanch. The Deputy Collector has also found that in the statement also there is no date mentioned. The Deputy Collector also further found that in the proclamation with regard to holding the auction no specific time is mentioned and while considering valuation and fixing the upset price, the T.D.O. has considered the Entry No. 86 with regard to the year 1980. However, entry of 1986 has not been considered and if it would have been considered then more price would have been fetched. The Deputy Collector also found that no wide publicity has been given with regard to auction and only six persons, i.e. the petitioners have participated in the auction. Thus it was found that foolproof proper procedure with regard to auction is not held.

4. Being aggrieved by the order dated 7.1.1991 passed by the order by the Deputy Collector, Himatnagar, in quashing and setting aside the order dated 9.3.1988 passed by the T.D.O., the petitioners preferred Revision Application before the Collector, Sabarkantha which was numbered as Appeal No. 138/91 and the Collector by his order dated 16th June 1992 allowed the said appeal by quashing and setting aside the order passed by the Deputy Collector, Himatnagar dated 7.1.1991 only on the ground that the Deputy Collector has not considered the locus standi/status of the appellant and that there is no public road passing through the said plots and that the petitioners have already deposited the amount and obtained the Sanad. It is pertinent to note that there is no finding given by the Collector, Sabarkantha while allowing the appeal with regard to defect in the public auction and that wide publicity for auction has not been given.

5. Being aggrieved with the order passed by the Collector, Sabarkantha dated 16th June 1992 in Appeal No. 138/91 in allowing the same and quashing and setting aside the order dated 7.1.1991 passed by the Deputy Collector, Himatnagar, by which the auction was quashed and set aside, the respondent No.1 preferred Revision Application before the learned Special Secretary (Appeals), Revenue Department, State of Gujarat which was numbered as SRD No. 12/1992. That the learned Special Secretary held that the notification dated 18.7.1986 with regard to taking a decision to hold public auction is without date. The learned Special Secretary has also found that the proclamation with regard to holding of auction at Village Chandap to be held on 27.5.1987 is also without any date. The learned Special Secretary has also found that except the petitioners nobody has participated in the public auction and ultimately found that proper procedure is not followed with regard to public auction and wide publicity with regard to auction is not held and that other participants are not invited. The learned Special Secretary also found that there is a breach of Section 165 and 166 of the Gujarat Panchayats Act as in the proclamation the date and place are not mentioned. Thus, on the basis of the evidence on record and the aforesaid finding and having held that if the plots in question are allotted, then it is likely to affect the activity of canal and ultimately the learned Special Secretary by judgment and order dated 26.7.1993 allowed the said revision application by quashing and setting aside the judgment and order passed by the Collector dated 16.6.1992 and restoring the order passed by the Deputy Collector, Himatnagar dated 7.1.1991.

6. Being aggrieved by the judgment and order passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad, dated 26.7.1993, the petitioner original-allottees had preferred the present Special Civil Application under Article 227 of the Constitution of India.

7. Shri J.V. Japee, learned advocate appearing on behalf of the petitioners had submitted that proper procedure was followed for holding the public auction. However, he has submitted that the auction should not have been set aside on some minor technical breaches. He has also further submitted the applications were given by the petitioners to the Gram Panchayat and the Chandap Gram Panchayat in its resolution of 30th July 1993 had also given no objection and had opined that the Panchayat has no objection if the plots in question are allotted to the petitioners. Shri Japee has also further submitted

that apart from the petitioners other persons has also participated in the public auction. He has also further submitted that they have already deposited and paid the amount pursuant to the order passed by the T.D.O. and that Sanads are already issued in their favour and therefore the auction should not have been set aside. He has also submitted that after the possession of the plots in question were handed over to them they have spent substantial amount in the construction and therefore also the auction should not have been quashed and set aside.

8. Shri A.J. Patel, learned advocate appearing on behalf of the respondent No.1 has relied upon the affidavit-in-reply filed on behalf of respondent No.1. He has submitted that the Deputy Collector as well as Special Secretary have categorically found that no proper procedure with regard to public auction has been followed and the public auction which is held is sham and bogus. He has also further submitted that wide publicity was not given with regard to holding the public auction. He has also further submitted that in the notification which was issued for public auction no date was mentioned. He has also further submitted that in the proclamation so far as o holding of auction on 11.7.1986 is concerned no specific date was mentioned and therefore the other persons who were interested in the public auction were not invited and only the petitioners participated in the public auction. He has further submitted that one of the petitioners was son of Deputy Sarpanch who was interested in seeing to it that his son may get the plot and therefore the applications were received by the Deputy Sarpanch, meeting of the Panchayat was also called by the Deputy Sarpanch and though the Sarpanch was there meeting was called by the Deputy Sarpanch and there was no power conferred on the Deputy Sarpanch to call meeting of the Panchayat. He has further submitted that there was an objection of the department to the effect that if the plots are given then it is likely to affect the canal activity and that plots in question will be part of the public road and/or just adjacent to the public road and if the plots are allotted then the width of the public road would be reduced. He has also further submitted that as such no Sanads are issued in favour of the petitioners and only Kabuliyats are issued and there is a difference between Kabuliyat and sanad. He has also further submitted that as such there is no construction carried out by the petitioners and accordingly he submitted to dismiss the present Special Civil Application.

9. Shri K.T. Dave, learned AGP appearing on behalf

of the State Government, has supported the order passed by the learned Special Secretary (Appeals) as well as the Deputy Collector. He has adopted the arguments canvassed on behalf of the respondent No.1 herein. He has also further submitted that not only the respondent No.1 herein but other village people had also raised objections against the aforesaid public auction and have filed complaint and therefore requested to dismiss the present Special Civil Application.

10. I have heard the learned advocates appearing on behalf of the parties. I have also gone through the judgment and orders passed by the Deputy Collector, Himatnagar, Collector, Sabarkantha and the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad. I have also gone through the documentary evidence produced on record that the petition as well as affidavit-in-reply and affidavit-in-rejoinder. When a question was put to the learned advocate appearing for the petitioners to show a copy of the Sanad which according to them was issued in their favour and the statement in the petition was shown to him to the effect that it was their categorical case that sanads are issued in their favour, Shri Japee having realised that there is no sanad issued in favour of the petitioners and only kabuliyats are issued, he has submitted that there was a bonafide mistake on his part to understand kabuliyat as sanad and he has admitted that as such there is no sanad issued in favour of the petitioners and he has also submitted that there is bonafide mistake on his part to consider kabuliyat as sanad.

Attention was brought to the notice of learned advocate appearing for the petitioners Mr. Japee to the categorical statement made in the petition to the effect that other persons had also participated in the public auction other than the petitioners and he was called upon to make good the said averment in the petition. Mr. Japee was also shown the finding of facts given by the Deputy Collector, the Collector and also the learned Special Secretary to the effect that only the petitioners participated in the public auction. However, the learned advocate appearing for the petitioners, Shri Japee could not make good the aforesaid statement made in the memo of petition which is on affidavit. The petitioners have also not stated in the Special Civil Application that the finding of facts recorded by the Deputy Collector as well as the learned Special Secretary to the effect that only the petitioners participated in the public auction and no other person has participated in the public auction is incorrect. Under the circumstances, it is held that the

petitioners have deliberately made a false statement on affidavit in the memo of petition that other persons have also participated in the public auction.

11. So far as the contention of the petitioners that they have incurred substantial expenses of Rs. 15000 to Rs. 20000 for plinth work and partial construction the petitioners were called upon to produce the evidence, but the learned advocate appearing for the petitioners could not produce any evidence to substantiate his claim with regard to incurring of substantial expenses of Rs. 15000 to Rs. 20000 for plinth work and partial construction made on the plots in question. On the other hand, a categorical statement has been made on behalf of the respondent No.1 that there is no construction whatsoever carried by the petitioners. Shri Patel, ld. advocate appearing for respondent No.1 has also submitted that as such the petitioners could not have started the construction work as no permission with regard to construction was ever granted in their favour and there was an objection from the office of the Canal Department by which they were restrained from putting up any construction. He has also further submitted that even otherwise the petitioners could not have started the construction in view of the fact that the Deputy Collector while entertaining the appeal had granted the order of status-quo. The aforesaid facts show the conduct of the petitioners. The petitioners have not come out with clean hands and had made a false statement before this Court.

12. From the bare reading of the judgment and order passed by the Collector, Sabarkantha, there is no discussion and/or finding with regard to proper procedure followed with regard to public auction. The Collector has while quashing and setting aside the order passed by the Deputy Collector, Himatnagar by which public auction was set aside has mainly relied upon the fact that there is already a road between the plots in question and building of the respondent No.1 and the petitioners have already deposited amount and obtained the Sanad. As stated hereinabove, the petitioners had admitted that there is no Sanad issued in their favour. Therefore, the finding given by the Collector, Sabarkantha to the effect that the petitioners have obtained the Sanad is factually incorrect. Merely because the petitioners had deposited the amount, that cannot be a ground for not quashing and setting aside the public auction. The plots in question are the public properties and therefore the authorities are required to see that they can fetch a maximum price of the plots in question. The Deputy Collector as well

as the learned Special Secretary while quashing and setting aside the auction has categorically held that one of the allottees is Son of the Deputy Sarpanch. Applications were received by the Deputy Sarpanch which are not signed by any of the petitioners and the said applications which were received by the Deputy Sarpanch were without any date. Both the authorities below had also found that the meeting of the Gram Panchayat upon which reliance has been placed by the petitioners was called by the Deputy Sarpanch though the Sarpanch was very much available. Both the authorities below have also found that no wide publicity had been given with regard to public auction. They have also further found that the Notification by which it was decided to hold the public auction was undated and that so far as the proclamation for holding the public auction for 11.7.1986 was concerned no specific time was mentioned with regard to holding the public auction and what was stated was that the auction was scheduled to take place at 8.00 A.M. or thereafter at any time on 11.7.1986 and accordingly the authorities have found that because of the aforesaid lacuna only the petitioners participated in the public auction and they offered the rate at the rate of Rs. 1.75 per metre by which upset price of Rs. 1.50 was fixed per metre. Thus, both the authorities have found that there are serious irregularities committed in the conduct of the auction proceedings and on the aforesaid findings the Deputy Collector as well as the learned Special Secretary had set aside the public auction and the orders passed by the T.D.O., by which the plots in question came to be allotted in favour of the petitioners. Considering the evidence on record, it cannot be said that the finding given by the Deputy Collector, Himatnagar as well as the learned Special Secretary are incorrect and/or as such it could not have been made by a prudent man. Considering the overall circumstances of the case, both the authorities below have found that there are serious infirmities committed in the conduct of the auction proceedings and it was a systematic plan to see that only the petitioners participate in the public auction and only the petitioners may get the plots in question. On the basis of the aforesaid finding and the evidence on record, it cannot be said that the judgment and order passed by the learned Special Secretary (Appeals) is in any way erroneous and/or illegal which calls for interference by this Court exercising power under Article 227 of the Constitution of India. No efforts are made by the authority to fetch maximum price. If wide publicity would have been given and more participants would have been called in the public auction then the authorities

might have fetched more price, but in view of the aforesaid fact when no wide publicity was given and only six persons, i.e., the petitioners herein came to be participated in the public auction there were serious irregularities in the public auction. Hence, the order passed in favour of the petitioners by which the petitioners were allotted the plots in question cannot be permitted to stand and the same has been rightly set aside by the learned Special Secretary as well as the Deputy Collector, Himatnagar.

13. In view of the aforesaid finding and also conduct of the petitioners, even before this Court by making a false statement in the present Special Civil Application, the petitioners do not deserve any sympathy and they are not entitled to any discretionary relief under Article 227 of the Constitution of India.

At this stage, Shri Japee, ld. advocate appearing on behalf of the petitioners had submitted that after a period of 10 years this Court should not quash and set aside the auction. Merely because this Court could not take up the present Special Civil Application for final hearing for 10 years, benefits should not be given to the petitioners, and if the public auction is not set aside, then it will amount to giving a premium to the persons who were not entitled to be allotted the plots in question. As the public auction in which the petitioners were allotted the plots in question are found to be absolutely illegal, sham and bogus and that there were serious irregularities committed in the conduct of the auction proceedings, merely because 10 years are passed in deciding the present Special Civil Application, there is no justification in not quashing and setting aside the public auction and not confirming the order passed by the learned Special Secretary (Appeals), more particularly in view of the fact that there is no evidence on record to show that the petitioners have spent substantial amount in putting up construction on the land in question.

14. For the reasons stated hereinabove, there is no substance in the present Special Civil Application. The petitioners could not show any irregularity and/or illegality in the order passed by the Deputy Collector, Himatnagar and the judgment and order passed by the learned Special Secretary. Under the circumstances, the present Special Civil Application is required to be dismissed and is hereby dismissed. Rule is discharged with no order as to costs. Ad-interim relief stands vacated forthwith. It will be open for the authorities

to take back possession of the plots in question and hold public auction, again, and after giving wide publication and inviting the public at large they can dispose of the plots in question and the petitioners can also participate in public auction that may be held.

rmr. [M.R. Shah, J.]